

September 22, 2006

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State Water Resources Control Board
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RE: Petition for Review of Waste Discharge Requirements (NPDES No. CA8000403) for the Poseidon Resources L.L.C.'s Seawater Desalination Facility at Huntington Beach, Issued by Regional Board Order No. R8-2006-0034.

Dear Ms. Jennings and State Water Resources Control Board:

The Surfrider Foundation (hereinafter "Surfrider" or "Petitioner"), joined by Orange County Coastkeeper (hereinafter "Coastkeeper") (collectively "Surfrider") hereby submits the following Petition for review to the State Water Resources Control Board ("State Board") pursuant to the requirements of California Water Code Section 13320 and Section 2050 of Title 23 of the California Code of Regulations.

This Petition seeks review of the National Pollutant Discharge Elimination System ("NPDES") Permit No. CA8000403, Order No. R8-2006-0034 ("the Permit"), issued on August 25, 2006 by the California Regional Water Quality Control Board, Santa Ana Region ("Regional Board"), to Poseidon Resources L.L.C ("Poseidon") for discharges of pollutants to waters of the United States from Poseidon's Seawater Desalination Facility at Huntington Beach ("HB Facility"). A copy of Order No. R8-2006-0034 is attached hereto as Exhibit A.

As more fully explained below, this appeal concerns the failure by the Regional Board to include an adequate Reopener provision in the Permit, to promulgate WQBELs for the Permit based upon a proper Reasonable Potential Analysis ("RPA"), and for failure to properly consider Poseidon's HB Facility as a stand alone reverse osmosis desalination facility. For these reasons, as fully described below, Surfrider requests that the State Board vacate the Regional Board's August 25, 2006 permit decision and order,

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remand the Permit for consideration by the Regional Board, and to further hold action on this Petition in *abeyance* as specifically requested under Parts I.F and III.D of this Petition.

I. *Petition for Review Requirements*

A. *Petitioner's Contact Information*

1. *Surfrider*

Surfrider's office contact information is: Surfrider Foundation, 8117 West Manchester Ave., # 297, Playa del Rey, California 90293. Their telephone number is (310) 410-2890, and E-mail address is: jgeever@surfrider.org to the attention of Joe Geever. Surfrider's legal counsel's contact information in this matter is as follows: Daniel Cooper, Lawyers for Clean Water, Inc., 1004 A O'Reilly Avenue, San Francisco, California 94129, Telephone: (415) 440-6520, Fax: (415) 440-4155, Email: cleanwater@sfo.com.

2. *Coastkeeper*

Coastkeeper's office contact information is 3151 Airway Avenue, Suite F-110, Costa Mesa, CA 92626, and can be reached by telephone at (714) 850-1965 and by e-mail at coastkeeper1@earthlink.net. (Attn: Garry Brown). Coastkeeper's legal counsel's contact information in this matter is as follows: Daniel Cooper, Lawyers for Clean Water, Inc., 1004 O'Reilly Avenue, San Francisco, California 94129, Telephone: (415) 440-6520, Fax: (415) 440-4155, Email: cleanwater@sfo.com.

B. *The Specific Action Which the State Board is Requested to Review*

Surfrider seeks the review, reversal and remand of the Permit granted to Poseidon on August 25, 2006 for discharges of pollutants from the HB Facility. A copy of the Permit is attached hereto as Exhibit A.

C. *Statement of Reasons the Action was Inappropriate or Improper*

As set forth more fully in Part II below, the Permit issued by the Regional Board conflicts with the policies of the State Board and the Clean Water Act ("CWA") in a number of respects. First, the Reopener Provision in the Permit is inadequate and threatens to undermine the State Board's Proposed State Wide Policy on CWA 316(b) Regulations ("316(b) Policy") before it is issued, via piecemeal permits issued by the Regional Board that are inconsistent with the State Board's 316(b) Policy and federal law.

Second, the Permit fails to adequately consider or address the impacts of the operations of the Poseidon HB Facility when it is not operational, or in the event the EPS is shut down or moves to a new location.

Third, the Permit conflicts with the CWA by ignoring the fundamental CWA requirement that all effluent be characterized in a Reasonable Potential Analysis (“RPA”) undertaken by the Regional Board *prior* to determining the need for water quality based effluent limits (WQBELs) in the permit. Permits must include WQBELs for pollutants that are or may be discharged at levels that cause, have reasonable potential to cause, or contribute to a receiving water excursion above any state water quality standard. As set forth more fully below, the Regional Board has established WQBELs in the Permit without following proper procedures and performing the analyses required in the State Water Resources Control Board (State Board)’s California Ocean Plan (“Ocean Plan”). By failing to follow these procedures, it cannot be known whether the WQBELs in the permit are sufficiently inclusive and sufficiently stringent to ensure attainment of CWA water quality standards (“WQS”). WQS are meant to protect the water quality needed for our State’s waters to be usable for fishing, swimming, drinking and irrigation water supply, wildlife habitat, and the various other beneficial uses of such waters.

Permit limits that ensure attainment of WQS and protection of healthy aquatic ecosystems are key to the CWA’s scheme of ensuring that the beneficial uses of the public’s waters are protected, and to promote the overarching goal of the CWA, whose purpose is “to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.” 33 U.S.C. § 1251(a).

Respecting these goals and the letter of CWA law requires the State Board to reverse the Regional Board’s Permit decision with instructions to promulgate a Reopener Provision in the permit that complies with the mandates of the State Board’s policies and promulgates WQBELs protective of WQS based upon a RPA that complies with the California Ocean Plan.

D. *The Manner in Which the Petitioner is Aggrieved.*

Surfrider is a non-profit public benefit corporation organized under the laws of the State of California dedicated to the protection and enjoyment of the world's oceans, waves and beaches for all people, through conservation, activism, research and education. Surfrider and its member chapters are dedicated to this mission and to the protection of coastal water quality, watersheds, and the preservation of waves and beaches throughout Orange County, including those in and around the City of Huntington Beach. Surfrider and its members benefit directly from the protection of these natural resources by using them for diverse recreational and aesthetic enjoyment purposes. Moreover, the waters in question are an important resource for recreational and commercial fisheries. The waters also provide significant wildlife values important to the mission and purpose of Petitioner. The value of these waters includes, among other

things, critical nesting and feeding grounds for resident and migratory water birds, essential habitat for endangered species and other plants and animals, nursery areas for fish and shellfish and their aquatic food organisms, and open space areas.

Orange County Coastkeeper is also a non-profit public benefit corporation organized under the laws of the State of California dedicated to the protection of water quality, watersheds, and the coastal environment. Coastkeeper's members also use and enjoy coastal waters throughout Orange County and Southern California, including the coastal waters surrounding the City of Huntington Beach and in the vicinity of the Poseidon HB Facility.

Using targeted administrative and legal advocacy before the State Board and regional regulators, both Surfrider and Coastkeeper play a lead role in developing sound legal standards, permits, and regulations. A key area of the groups' focus is ensuring that State and Federal environmental laws are implemented properly and enforced. Where necessary, Surfrider and Coastkeeper initiate enforcement actions on behalf of themselves and their members.

Surfrider and Coastkeeper, their members, and the general public are adversely impacted by the discharge of pollutants from the Poseidon HB Facility into coastal waters, which threaten serious adverse impact on the near shore waters and aquatic ecosystems in and around the City of Huntington Beach. Surfrider and Coastkeeper, their members, and the general public are also aggrieved by the Regional Board's Permit decision because the Permit authorizes the discharge of pollutants from the Poseidon HB Facility into coastal waters and renders these discharges of pollutants lawful under the CWA, thus beyond the ability of Surfrider and the public to seek remedy for these discharges under the enforcement provisions of the CWA (which include action by the United States Environmental Protection Agency ("EPA"), the Federal agency primarily responsible for protection the nation's waters, and/or by citizens).

E. *Poseidon's HB Facility*

Poseidon proposes to construct and operate the HB Facility on the same site as the AES Southland LLC ("AES") power generating station in Huntington Beach. Poseidon proposes to produce potable water for delivery into the regional water distribution system for the Southern California Region and particularly Orange County. Poseidon will utilize approximately 100 MGD of heated condenser cooling water, from the Huntington Beach Generating Station owned and operated by AES Southland as source water for desalination. The desalination process will consist of source water screening, coagulation, filtration, pH adjustment, chlorination, de-chlorination, and reverse osmosis (RO) membrane separation, and product water dechlorination and chemical conditioning. The RO system will be a single-pass design using high-rejection seawater membranes. The system will be made up of 13 process trains, each train with a design capacity of about 4 MGD. The HB Facility will produce 50 MGD of potable

water and 50 MGD of concentrated brine water. Approximately 4 MGD (6.3 MGD maximum) of filter backwash will be produced and will be mixed with the concentrated brine water. RO spent cleaning wastes (0.29 MGD) will be stored and treated. All the membrane cleaning waste streams will be conveyed to a 200,000 gallons washwater tank for used cleaning solution retention and treatment prior to discharge to the desalination plant effluent outfall. Poseidon will utilize chlorine in the form of sodium hypochlorite to control and prevent microbiological growth in the transmission pipelines and filter media. Chlorine will be injected before the influent to the filtration system. Chlorine will also be used to disinfect product water to meet the State Department of Health Services water quality standards. The concentrated brine water with other process wastewater described above will be discharged to the ocean through the existing AES outfall.

F. *The Specific Action Requested by Petitioner*

For the Reasons stated in I.C above and in Part II below, Surfrider seeks an order by the State Board vacating the Regional Board's August 25, 2006 Permit action, remanding the Permit to the Regional Board, and directing the Regional Board to reconsider this matter in light of the spirit and the letter of CWA, which require adoption of a Permit containing a Reopener Provision that complies with the State Board's policies and which contains WQBELs protective of WQS based upon a RPA that complies with the California Ocean Plan.

Further, Surfrider respectfully requests that action on this Petition be held in abeyance until the State Board formally adopts the State Wide Policy on 316(b) Regulations. In the alternative, Surfrider requests that action on this Petition be held in abeyance until after the appeal concerning Poseidon's HB Facility's development plans and EIR, now pending before the California Coastal Commission ("CCC"), is resolved before the CCC.

II. *Statement of Points and Authorities Supporting Petitioner's Request*

A. *The Re-Opener Provision in the Permit is Inadequate and Undermines the State Board's Proposed State Wide Once Through Cooling Policy.*

On its face, the Reopener Provision in the Permit is inadequate because it contains no requirement that the Permit be re-opened in the face of either: demonstrable harm to marine ecosystems; violations of the Permit; changes in State or federal law or policies; or for the occurrence of the enumerated Reopener terms and conditions stated in the Permit. Each of the terms in the Reopener Provision except one¹ provide that the Order

¹ In an Errata Sheet, dated August 25, 2006, Item 14, the Regional Board adds an apparent mandatory reopener provision: "This Order will be reopened to address physical or operational alterations to the permitted facility that would affect the requirements for discharges from the facility." See Exhibit B, attached.

“may” be reopened upon the occurrence of any of four enumerated conditions. *See* Permit, Section VI.C.1.² These occurrences include, among others, “[a]ny changes in State or federal plans, policies or regulations that would affect the quality requirements for the discharges,” and further include “effluent limitations for pollutants determined to be present in the discharge in concentrations that pose a reasonable potential to cause or contribute to violations of water quality objectives.”³

Thus, there is no express provision *requiring* the reopening and modification, reissuance or any other action on the Permit under all but one of the enumerated circumstances; nor is there an express requirement that the Permit be reopened once the State Board’s 316(b) Policy becomes final and Poseidon’s compliance with both this Policy is required by law. Even assuming that the adoption of the forthcoming 316(b) Policy fits one of the enumerated circumstances set forth in the Permit’s optional Reopener Provision, there is absolutely no requirement that the Regional Board reopen the Permit once the 316(b) Policy takes effect. This is so in spite of the fact that the State Board’s 316(b) Policy has been developing for many months in concert with numerous public hearings to receive input from stakeholders and the public on its implementation, which is likely to be imminent.⁴

Besides the HB Facility, Poseidon is proposing several once through cooling desalination plants along the California coast. These plants will operate in tandem with power generating stations, which also require permits from the regional boards. The Santa Ana Regional Board simultaneously permitted the AES Power Generation Plant in Huntington Beach, Order R8-2006-0011 (“AES Permit”). As directed by the AES permit, by January 2008, AES must either demonstrate compliance with or set forth a plan to achieve a 85% reduction in impingement and 90% reduction in entrainment associated with the power plant. Importantly, the AES Permit contains a reopener provision that expressly provides that the permit will be reopened. The reopener provision in the AES Permit provides:

“This Order will be reopened to address changes in State or federal statutes, plans, policies or regulations that would affect the requirements of the Order that pertain to cooling water intake.”

² It is also worth noting that the State and regional boards rarely re-open permits, with just 27 reopenings in the last 19 years. The rate of reopening is therefore approximately 1.5 per year.

³ This section of the Permit’s reopener provision provides one of the few references to a Reasonable Potential Analysis (“RPA”) in the entire document. As discussed below in Part II.B, the Permit fails to perform a RPA prior to establishing final effluent limitations.

⁴ The draft 316(b) Policy, entitled *Scoping Document: Proposed Statewide Policy on Clean Water Act Section 316(b) Regulations* (June 13, 2006), is available on the State Board’s website. Given the progress of development and hearings on the 316(b) Policy, it is entirely likely that it will be in place some time in 2007.

See AES Permit § VI.C.1(f) (emphasis supplied). Similar language is further included in subsection (a) of the AES Permit, which stipulates that the permit “**will** be reopened to address any changes in State or federal plans, policies or regulations that would affect the quality requirements for the discharges.” (emphasis supplied). From the quoted provisions, it is clear that the Santa Ana Regional Board contemplated the imminent adoption by the State Board of the 316(b) Policy and implementation of the federal regulations, by providing for the reopening of the AES Permit. The Permit for Poseidon’s HB Facility currently lacks, yet should have, precisely the same reopener provision. As it stands, the Regional Board simply has the option to reopen and modify the Permit when the State Board’s 316(b) Policy takes effect. If the Regional Board chooses not to reopen the Permit before its expiration, or delays in doing so after adoption of the 316(b) Policy, this will frustrate implementation of that Policy and the requirements of the CWA. Moreover, this piecemeal approach to NPDES permitting for piggy-backed power generating and desalination projects is at odds with one of the central functions of the State Board—to ensure consistency in permit decisions and compliance with State Board policies and the CWA.

Accordingly, the Regional Board should include language in the Reopener Provision that the Permit be automatically reopened with appropriate public comment and participation once the Proposed State Wide Policy on CWA 316(b) Regulations takes effect. Further, the Regional Board should strengthen the Reopener provision to ensure that the Permit will be reopened for other significant reasons, such as the publication of a Comprehensive Demonstration Study (“CDS”), violations of the Permit, or any other changes in relevant law, regulation or policy, that would have a bearing on the waste discharge requirements.⁵ The imposition of a strengthened Reopener provision would provide an important safeguard to ensure consistent application of state wide policies and permits and to ensure that the severity and duration of adverse impacts to marine ecosystems will be minimized by operations of the Poseidon HB Facility.

Surfrider respectfully requests that the State Board vacate the Order of the Regional Board and Remand the Permit to the Regional Board to draft a new Reopener provision that incorporates a mandatory reopener provision that acknowledges the imminent implementation of the State Board’s Proposed State Wide Policy on CWA 316(b) Regulations, and strengthens the Reopener Provision, by adding terms and conditions that *require* reopening when necessary to protect the health of marine ecosystems. In doing so, the State Board and the Regional Board will ensure that Poseidon’s operations will protect public resources at the same time they are providing a public and private benefit, rather than providing these benefits at public expense.

⁵ These standards for Re-opening a reverse osmosis desalination plant permit were recommended by the staff of the Santa Ana Regional Water Quality Control Board in response to comments received in connection with the AES Permit.

B. *There is no Reasonable Potential Analysis (RPA) That Analyzes the HB Facility's Discharges in Formulating WQBELs in the Permit.*

Pursuant to 40 C.F.R. § 122.44(d), all effluent must be characterized by the Regional Board prior to determining the need for water quality based effluent limits (WQBELs) in the permit. Permits must include WQBELs for pollutants that are *or may* be discharged at levels that cause, have reasonable potential to cause, or contribute to a receiving water excursion above any state water quality standard.

In Part IV.A.1 of the Permit, final effluent limitations are established for a host of pollutants, including heavy metals, chlorine residual, ammonia-nitrogen, pH, and temperature, among others. These effluent limitations are alleged to be the same as those established in the permit for the AES/Huntington Beach power plant, Order No. R8-2006-0011 ("AES Permit"). *See* Permit fact sheet, p. F-15. Since the HB Facility is new, no effluent data is available. *Id.* However, unlike the AES Permit, the HB Facility Permit wholly lacks the reasonable potential analysis ("RPA") required by law to determine appropriate effluent limitations. The separate RPA for the AES permit cannot substitute or suffice for a RPA that addresses discharges from Poseidon's HB Facility, and/or the combined effluent discharged from the AES and HB Facilities.

Moreover, neither the AES Permit nor the Permit contain an RPA that follows the express requirements of the California Ocean Plan for facilities that, because they are new (like the HB facility) or because they have been re-tooled (like the AES facility), lack site specific data. The California Ocean Plan published by the State Board sets out the appropriate procedure for conducting an RPA when there is a lack of site specific data. According to that document, if facility-specific effluent monitoring data is not available (as is the case here), step 13 must be used. Step 13 requires a review of all available information to determine if WQBELs exist, including the *discharge type*, solids loading analysis, *facility type*, history of compliance problems, potential toxic impact of discharge, fish tissue residue data, water quality and beneficial uses of the receiving water, CWA 303(d) listing for the pollutant, the presence of endangered or threatened species or critical habitat, and other information. This analysis should also include consideration of the impacts on the AES facility's cooling water flows caused by changes in flow quantity or character brought about by compliance with the forthcoming 316(b) Policy and existing CWA regulations, or in the event that the Poseidon CDP operates as a stand alone facility (see comments in II.C, below).

A wealth of data is available in the desalination literature that has not been considered in an RPA for Poseidon's HB Facility permit. For instance, data on the *discharge type* is available and has not been considered. These impacts should be carefully analyzed as part of the RPA. The article "Ecotoxicological marine impacts from seawater desalination plants", published in Desalination Journal, highlights several potential impacts which are not adequately considered. A few of these impacts are as follows:

(1) ***Thermal loading.*** Thermal loading was found to bring about the following adverse effects: depression in the rate of phytoplankton photosynthesis; replacement of normal algae populations by less desirable species; the decrease in the production of macroalgal populations; and a decrease the abundance and diversity of phytoplankton.

(2) ***Increased salinity:*** increase in the salt concentration can reduce plankton production to extinction (mainly of larvae and young individuals). The susceptibility of invertebrates, mainly crustaceans, varies, but in general, those with a long stomach are more sensitive to a rise in salinity than those with a short one. Crustacean and other invertebrate larvae floating in the water column are also more sensitive to variations in salinity levels than fully developed individuals. Some of the species, mainly the diatoms, are resistant to high salinity levels, but most of the species will not survive.

(3) ***Copper (Cu):*** Concentrations of copper found in desalination effluents are 200 fold higher than natural copper concentrations in sea water; moreover, at elevated levels, Cu is very toxic, it acts as enzyme inhibitor in organism and can result in the demise of large numbers of susceptible organisms. For phytoplankton, Cu inhibits photosynthesis, restrict the uptake and assimilation of nitrate and the uptake of silicate.

In addition, data on the ***facility type*** is available. Thus, the RPA should analyze data from similar facilities, rather than simple calculating WQBELs from statistical analyses based upon estimates generated by samples or by the discharger. According to the article “Concentrate and other waste disposals from SWRO plants: characterization and reduction of their environmental impact”, published in Desalination Journal, effluents from Salt Water Reverse Osmosis (SWRO) plants (such as CDP), result from reverse osmosis lines, which discharge concentrate, rinsing water characterized by a high content in dissolved salts (generally from 1.7 to 2.5 times that of the seawater content) and by an acid pH (pH about 5.50 vs. a seawater pH close to 8.00). The SWRO membrane cleaning units also utilize dirty chemical solutions, which are characterized by a pH that may be very alkaline (pH 11) or very acid (pH 3) and can cause strong loads in biological, mineral and organic matters.

Further, the journal article “Chemical impacts from seawater desalination plants - a case study of the northern Red Sea” discussed the effects of conventional discharge methods similar to those proposed in Poseidon’s permit and found that the overall daily chlorine discharge within the study area amounted to 2,708 kg. More optimistically, the article “Brine Discharge from the Javea Desalination Plant”, published in Desalination Journal, discusses a reverse osmosis facility with a decreased marine impact: The Javea desalination plant, on the Mediterranean coast of Spain. This SWRO plant currently has a production capacity of 28,000 m³/d of desalinated water. The brine discharge of this plant, conveniently diluted in the Fontana Canal, creates an artificial movement of the waters in the Canal, and brings the density and the temperature of the canal water more in

line with that of sea water. It also reduces the effects of the sun in summer and oxygenizes the beds of the canal.

These journal articles provide an example of the wealth of data available concerning discharges and facilities comparable to Poseidon's HB Facility, yet these data and studies were not considered in an RPA that should have been performed in order to properly formulate the WQBELs set forth in the Permit.

C. The Undiluted Direct Discharges from a Stand-Alone Facility Have not Been Adequately Analyzed and Will Have Significant Adverse Marine Impacts

In the event that the AES facility shuts down, is idle for substantial periods of time, or moves to another location, Poseidon's HB Facility will then be operating as a stand alone facility.⁶ Again, the literature suggests that discharges from a stand-alone reverse osmosis plant can have significant adverse impacts on marine ecosystems. According to the article "The footprint of the desalination processes on the environment", published in Desalination Journal, the direct discharge method (the method for a stand-alone plant) is not recommended for seas with high sensitivity, or for large desalination plants. Even if the brines would be mostly diluted at a short distance from the outlet, during the many days in which the sea is calm, the secondary dilution would be negligible. On those days the damage to the coastal habitats would be high.

In addition, according to the article "Ecotoxicological marine impacts from seawater desalination plants", published in Desalination Journal, some chemical components released by desalination plants pose a potential hazard to estuarine organisms owing to their toxicity. Most important in this respect are chlorine and trace metal loads which must receive much attention because at times it accounts for much of the mortality of susceptible organisms in discharge waters, leaving their mark on the flora and fauna around the pipeline outlet. Taken together, thorough consideration of the marine impacts of operating the CDP as a stand-alone facility must be included in the permit. Moreover, as part of the Regional Board's obligation to exercise best professional judgment, thorough consideration of the impacts on Poseidon's discharges resulting from AES' compliance with the federal 316(b) regulations must be undertaken and reflected in the permit. Because the Permit has not adequately considered Poseidon's operations as a stand-alone facility without AES, the Permit is inadequate.

⁶ In the event of a loss of AES's cooling source water, Poseidon has offered to provide a report of waste discharge and to apply for a new permit. The Regional Board seems to have accepted this offer, by requiring a reopener of the Permit under these and similar circumstances. (See Permit errata sheet item 14, number 4, Exh. B). Yet, there has been no thorough analysis, if any, regarding a temporary loss of AES cooling water on Poseidon's discharges in the event the plant continues to function temporarily with other sources.

III. Conclusion

A. The State Board Should Vacate and Remand the Permit

The Regional Board acted unlawfully in failing to perform a Reasonable Potential Analysis when establishing WQBELs in the Permit. The Regional Board also failed to adequately consider Poseidon's operations as a stand alone facility, and to provide any provisions for an automatic or mandatory reopening of the Permit to minimize harm to public resources or otherwise comply with the State Board's forthcoming State Wide Policy on CWA 316(b) Regulations, or other significant changes in state or federal law. The State Board should therefore vacate the Regional Board's Permit decision and order and remand the Permit to the Regional Board with instructions to substantially revise the Reopener Provision in the manner described herein, perform a complete RPA and promulgate appropriate WQBELs, and make any other appropriate changes after consideration of the impacts of the HB Facility's operations as a stand-alone facility.

B. This Petition Has Been Sent to the Regional Board and to the Discharger

Surfrider sent true and correct copies of this Petition on September 22, 2006 to the Regional Board and to Poseidon (the discharger) as follows:

Gerard Thibeault, Executive Officer
Santa Ana Regional Water Quality Control Board
3737 Main Street, Suite 500
Riverside, CA 92501-3348
Fax: (951) 781-6288

Poseidon Resources (Surfside) L.L.C.
21652 Newland Street
Huntington Beach, CA 92646

C. The Substantive Issues Raised Herein Were Raised Before the Regional Board

Surfrider raised and presented the issues addressed in this Petition, as well as other issues, to the Regional Board in an August 8, 2006 public comment letter duly submitted by Surfrider to the Regional Board during the applicable public comment period on the Permit, and in a public hearing on August 25, 2006, before the Regional Board on the Permit. Surfrider's comment letter is attached to the Petition as Exhibit C, and a set of talking points submitted at the hearing is attached as Exhibit D. Orange County Coastkeeper also submitted a comment letter, dated July 7, 2006, attached as Exhibit E, and commented at the August 25, 2006 hearing.

D. *Request that Action on this Petition Be Held in Abeyance*

Surfrider respectfully requests that action on this Petition be held in abeyance until the State Wide Policy on 316(b) Regulations is formally adopted. In the alternative, Surfrider requests that action on this Petition be held in abeyance until after the appeal concerning Poseidon's HB Facility's development plans and EIR, now pending before the California Coastal Commission ("CCC"), is resolved before the CCC.

Dated: September ___, 2006

Respectfully submitted,

By:_____

Martin McCarthy

Daniel Cooper

Lawyers for Clean Water, Inc.

Attorneys for Surfrider Foundation

and Orange County Coastkeeper